International Printing & Graphic Communications Union, Local 51, AFL-CIO[1] *and* Format Printing Company, Inc.[2] and New York Typographical Union No. 6. Case 22-CD-386

January 12, 1983

DECISION AND DETERMINATION OF DISPUTE

BY MEMBERS JENKINS, ZIMMERMAN, AND HUNTER

This is a proceeding under Section 10(k) of the National Labor Relations Act, as amended, following a charge filed by the Format Printing Company, Inc., herein called the Employer, alleging that International Printing & Graphic Communications Union, Local 51, AFL-CIO, herein called Respondent or the Printers, had violated Section 8(b)(4)(D) of the Act by engaging in certain proscribed activity with an object of forcing or requiring the Employer to assign certain work to its members rather than to employees represented by New York Typographical Union No. 6, herein called the Typographers.

Pursuant to notice, a hearing was held before Hearing Officer Patrick McDermott on September 24, 1982. All parties appeared and were afforded full opportunity to be heard, to examine and cross-examine witnesses, and to adduce evidence bearing on the issues. Thereafter, the Employer filed a brief.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has reviewed the Hearing Officer's rulings made at the hearing and finds that they are free from prejudicial error. They are hereby affirmed.

Upon the entire record in this proceeding, the Board makes the following findings:

I. THE BUSINESS OF THE EMPLOYER

The parties stipulated, and we find, that the Employer is a Delaware corporation engaged in the business of manufacture, sale, and distribution of business forms at its Totowa, New Jersey, facility, the only facility involved herein. During the preceding 12 months, the Employer derived gross revenue in excess of $50,000 from the sale and distribution of its products directly to customers located outside the State of New Jersey. We find that the Employer is engaged in commerce within the meaning of Section 2(6) and (7) of the Act and that it will effectuate the purposes of the Act to assert jurisdiction herein.

II. THE LABOR ORGANIZATIONS INVOLVED

Based on the record as a whole, we find that International Printing & Graphic Communications Union, Local 51, AFL-CIO, and New York Typographical Union No. 6 are labor organizations within the meaning of Section 2(5) of the Act.[3]

III. THE DISPUTE

A. *The Work in Dispute*

The work in dispute is cameraman/stripper work in the Employer's pre-press department.

B. *Background and Facts of the Dispute*

In the early 1960's the Employer utilized flexographic and letterpress printing processes and a "hot-type" composing room. Its composing room employees were represented by the Typographers.[4] Its printers were, and continue to be, represented by the Printers. In about 1967, the Employer began to convert to a web-offset printing process which used lithographic plates and the hot-type composing work was phased out. As their work decreased, the two composers, Behr and Roe, were assigned plate filing, supply ordering, and other noncomposing duties.

In the early 1970's, the Employer purchased a camera and related equipment in order to make its own negatives for platemaking. It reassigned Behr and Roe to operate the camera and "strip" the negatives, that is, prepare them for the platemaking process. Roe quit in 1973 and, upon the Employer's request, the Typographers referred a member, Woodman, as a replacement. In 1975, Woodman was discharged and the Employer again requested

[1] The name of the Respondent appears as amended at the hearing.

[2] The name of the Employer appears as amended at the hearing.

[3] In this regard, the record reveals that the Printers has a collective-bargaining agreement with the Employer and that some of the Employer's employees belong to the Printers. Similarly, the Typographers has a collective-bargaining agreement with the Printers League Section of Printing Industries of Metropolitan New York, Inc., and, until recently, at least one of the Employer's employees was a member of the Typographers. It is thus apparent that employees participate in both the Printers and the Typographers and that they exist, at least in part, for the purpose of dealing with employers concerning wages, hours, working conditions, etc., of employees. Moreover, we note that the Board has previously found that the Typographers is a labor organization within the meaning of Sec. 2(5) of the Act. See *New York Typographical Union No. 6, AFL-CIO (Artintype, Inc.)*, 213 NLRB 925 (1974).

[4] When it left the Typographers jurisdiction when it moved its facility to New Jersey at the end of 1966, the Employer signed an agreement to continue to recognize the Typographers "as exclusive representative of all composing room employees under the terms of the contract between Printers League Section and New York Typographical Union No. 6." While the Employer did not negotiate with the Typographers nor execute a collective-bargaining agreement with the Typographers, it continued to pay current wage rates and benefits and otherwise implement the Typographers contract with respect to its employees who were members of the Typographers.

a Typographers replacement. The Typographers, however, did not refer anyone. The Employer then assigned employee Brouillard, a member of the Printers, to assist Behr.[5] Behr notified the Employer in 1979 or 1980 that he intended to retire at the end of 1981. The Employer thereafter provided Brouillard with intensive training so that he could assume Behr's full duties upon the latter's retirement.[6] Brouillard replaced Behr, as planned, in January 1982. At that time, the Employer decided it needed only one cameraman/stripper. It also decided to train one of its other Printers employees on a part-time basis as a backup for periods when Brouillard was temporarily unavailable.

In February 1982, the Typographers complained that the Employer had not hired one of its members to replace Behr. When the Employer continued to refuse to do so, the Typographers filed an arbitration request pursuant to its contract with the Printers League Section, to which it asserted the Employer was bound. The Employer appeared at the arbitration hearing under protest and argued that it did not have a contract with the Typographers and that, even if it did, the contract did not cover the work in dispute.[7] The arbitrator found that the Employer was bound to the Typographers/Printers League Section collective-bargaining agreement and ordered that the cameraman/stripper work be assigned to a member of the Typographers.

When the Employer received a copy of the arbitrator's award, it notified Brouillard and the Printers steward. The next day, the Printers president, Seide, in a telephone conversation with the Employer's president, stated that the cameraman/stripper work was within the Printers jurisdiction, that a Printers member had been performing the work for years, and that, if Brouillard were replaced, he, Seide, would "pull the whole damn shop."

C. *Contentions of the Parties*

The Employer contends that its collective-bargaining agreement with the Printers covers the work in dispute, that it would be inefficient to train an outside employee to perform the highly skilled work and that assignment of the work to a Printers member would be consistent with its own past practice, its preference, and area practice. It also asserts that it has no contract with the Typographers and that the Typographers waived any right it may have had to the work by failing to refer a replacement for Woodman or to protest Brouillard's assignment to the work in 1975.

The Printers contends that the work in dispute should be assigned to its member because the member has been performing the work for a number of years and was trained specifically to take over the position. The Typographers asserts that it has a contract with the Employer which covers the work in dispute and that since the work was previously performed by one of its members it should continue to be so assigned.

D. *Applicability of the Statute*

Before the Board may proceed with a determination of the dispute pursuant to Section 10(k) of the Act, it must be satisfied that there is reasonable cause to believe that Section 8(b)(4)(D) has been violated and that the parties have not agreed upon a method for the voluntary adjustment of the dispute.

As noted above, the Printers threatened adverse economic action against the Employer should the Employer reassign the work to an employee not represented by it. Under settled Board policy, reasonable cause to believe that a violation of Section 8(b)(4)(D) has occurred exists if a labor organization, which represents employees who are assigned the disputed work, puts improper pressure upon an employer to continue such assignment.[8] Based on the foregoing, and the record as a whole, we find that there is reasonable cause to believe that an object of the Printers action was to force the Employer to continue to assign the disputed work to an employee represented by the Printers and that therefore a violation of Section 8(b)(4)(D) has occurred.

No party contends, and the record contains no evidence showing, that there exists an agreed-upon method for the voluntary adjustment of this dispute which is binding on all the parties. Accordingly, we find that this dispute is appropriate for resolution by the Board under Section 10(k) of the Act.

E. *Merits of the Dispute*

Section 10(k) of the Act requires the Board to make an affirmative award of disputed work after giving due consideration to various factors.[9] As the Board has frequently stated, the determination in a jurisdictional dispute case is an act of judgment

[5] At no time did the Typographers complain to the Employer about Brouillard's assignment to assist Behr.

[6] This intense training was required because the Employer's processes are more sophisticated and more complicated than regular camera and stripping work.

[7] The Printers did not participate in the arbitration hearing.

[8] See, e.g., *International Association of Machinists and Aerospace Workers, AFL-CIO, District Lodge No. 7 (Joseph E. Seagram & Sons, Inc.)*, 198 NLRB 407 (1972).

[9] *N.L.R.B. v. Radio and Television Broadcast Engineers Union, Local 1212, International Brotherhood of Electrical Workers, AFL-CIO [Columbia Broadcasting System]*, 364 U.S. 573 (1961).

based on commonsense and experience in weighing these factors. The following factors are relevant in making a determination of the dispute before us.

1. Certifications and collective-bargaining agreements

Neither of the Unions involved herein has been certified by the Board as the collective-bargaining representative for a unit of the Employer's employees. There is no dispute that the Employer has a collective-bargaining agreement with the Printers. The pertinent jurisdictional language of this contract states that the Printers is recognized as the exclusive representative of "all employees in the pressrooms of the [Employer], engaged as printing pressmen as listed in the wage scales contained in this Contract." The agreement also states that "an employee engaged to work in a job classification set forth in this Contract shall be employed in accordance with this Contract." The job classifications of cameraman and stripper are included among those listed in the wage scales of the agreement.

The Employer denies that it has a collective-bargaining agreement with the Typographers. The Typographers asserts, to the contrary, that the Employer is bound by the Typographers/Printing League Section contract. This contention is grounded on the agreement, executed by the Employer in late 1966 or early 1967, in which it recognized the Tyographers as the exclusive representative of its composing room employees and agreed to be bound by the Typographers contract. The Typographers also argue that by continuing to apply the terms and conditions of its current contract to Behr, the Employer has manifested an intent to be bound by the agreement.

The jurisdiction section of the Typographers agreement states that it covers:

> . . . all composing room work . . . and includes . . . paste make-up of all type, hand-lettered, illustrative, border ruling, photo-proofing, correction, alteration and imposition of the paste make-up serving as the completed copy for the camera, used in the platemaking process.

The jurisdiction section also contains the following paragraph:

> Offset Operations
>
> The work involved in the operation of the camera used in the platemaking process, opaquing, imposition stripping and platemaking operations shall be covered in a separate agreement for wages, hours and working conditions. This agreement shall be for those employers who recognize by separate signature New York Typographical Union No. 6 as representative of its employees engaged in such work.

Contrary to the Typographers contentions, we find that the 1966–67 recognition agreement covering the composing room employees lapsed when the Employer ceased performing hot-type composing work. We also find that the initial jurisdictional statement quoted above does not cover the cameraman/stripper work. On its face it describes "paste-up" work, that is, the preparation of material to be photographed. We note that the Employer's president testified without contradiction that the Employer did not engage in "paste-up" work. In addition, we find that the paragraph denoted "Offset Operations" accurately describes the work in dispute. Thus, since the Employer did not enter into a separate agreement covering its cameraman/stripper work, the Typographers agreement by its own terms specifically excludes the work in dispute. In light of the above, we find that the Employer's application of the contract terms and conditions to Behr does not manifest an intention to adopt the Typographers agreement.[10]

We find that the Printers contract with the Employer specifically covers the work in dispute and that there is no collective-bargaining agreement between the Employer and the Typographers. Accordingly, we find that the factor of collective-bargaining agreements favors an award of the work in dispute to employees represented by the Printers.

2. Arbitration award

As indicated above, the Typographers requested arbitration regarding its claim to the work in dispute. The Employer attended the arbitration hearing under protest, contending, *inter alia*, that it did not have a contract with the Typographers. The Printers did not participate in the arbitration hearing. Thus, all parties did not participate in the arbitration hearing or agree to be bound by the results thereof. Accordingly, we give no weight to the arbitrator's award of the work in dispute to the Typographers.[11]

---

[10] We give no weight to the arbitrator's conclusion that the Employer was a party to the Typographers/Printers League Section contract since the Employer attended the arbitration hearing under protest and did not agree to be bound by the arbitrator's award. See, generally, *Spielberg Manufacturing Company*, 112 NLRB 1080 (1955).

[11] See *International Die Sinkers' Conference and Detroit Die Sinkers' Lodge No. 110 (General Motors Corporation)*, 197 NLRB 1250 (1972).

3. Employer past practice

The Employer's past practice does not reveal a consistent assignment of the work in dispute to either group of employees. Thus, for the first several years of the Employer's camera operation, both cameraman/strippers were represented by the Typographers; from 1975 through 1981, the Typographers and the Printers each represented one employee. We find, therefore, that the factor of the Employer's past practice is not determinative of the instant dispute.

4. Employer present assignment and preference

Since January 1982, the Employer has assigned an employee represented by the Printers to the cameraman/stripper work. At the hearing and in its brief, the Employer has expressed its preference that the disputed work continue to be performed by employees represented by the Printers. While we do not afford controlling weight to these factors, we find that they tend to favor an award of the work in dispute to employees represented by the Printers.

5. Industry practice

The significance of industry practice here depends on how the Employer's industry is defined. Thus, the record reveals that, of the few unionized business form printers in the area, the Printers represents the employees performing the disputed work. The Typographers, however, does represent employees engaged in cameraman/stripper work for employers who print materials other than business forms. We find that the record evidence is insufficient to determine with any certainty the relevant industry with which to compare the Employer. We, therefore, find that this factor does not favor an award to either group of employees.

6. Relative skills

The evidence here shows that the Employer's camera and negative stripping operation is more sophisticated and more complex than the similar operations of other printer employers. The employee represented by the Printers who is presently performing this work received between 1 and 2 years of intensive training so that he could replace a retiring employee, who had been represented by the Typographers. There is no evidence that any employee represented by the Typographers possesses the requisite skills to perform the work at this time. We find that this factor favors assignment of the disputed work to employees represented by the Printers.

7. Economy and efficiency of operations

The Employer has invested considerable time and money in the training of the employee presently performing all the work in dispute. It estimates that a new employee represented by the Typographers, who had experience as a cameraman/-stripper, would require a year of training to perform the Employer's work properly. Thus, if a new employee had to be brought in and trained, the Employer would lose its investment in the current employee and its entire printing operation would be hampered during the training period. In addition, if the work is awarded to employees represented by the Printers, the Employer will be able to train another of its Printers-represented employees to cover for the current employee's absences. On the other hand, if the work is awarded to employees represented by the Typographers temporary replacements, presumably unfamiliar with the Employer's operations and untrained in the work in dispute, would have to be obtained through the Typographers. Therefore, we find that economy and efficiency of operations favors an award of the disputed work to employees represented by the Printers.

Conclusion

Upon the record as a whole, and after full consideration of all relevant factors involved we conclude that employees represented by the Printers are entitled to perform the work in dispute. We reach this conclusion based on the Employer's current collective-bargaining agreement with the Printers; the Employer's present assignment, which is not inconsistent with its past practice or with industry practice in the area; the skills and training possessed by the employee represented by the Printers; and economy and efficiency of operations.

In making this determination, we are assigning the disputed work to employees currently represented by the Printers, but not to the Printers or to its members. Our present determination is limited to the particular controversy which gave rise to this proceeding.

DETERMINATION OF DISPUTE

Pursuant to Section 10(k) of the National Labor Relations Act, as amended, and upon the basis of the foregoing factors and the entire record in this proceeding, the National Labor Relations Board makes the following Determination of Dispute:

Employees of Format Printing Company, Inc., at its Totowa, New Jersey, facility who are currently represented by the International Printing & Graphic Communications Union, Local 51, AFL-CIO,

are entitled to perform the work of cameraman/-stripper in the Employer's pre-press department.